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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

September 12, 1994

OUR FILE NO.  
1228-101-63

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554


RE: FCC 94-198  
Docket No. PP 93-253

Dear Mr. Caton:

Transmitted herewith, on behalf of The National Paging & Personal Communications Association, are an original and nine copies of its **COMMENTS IN SUPPORT OF FURTHER NOTICE OF PROPOSED RULEMAKING** in the above-referenced proceeding.

Should further information be desired, kindly communicate directly with this office.

Very truly yours,



Melodie A. Virtue

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Before The **Federal Communications Commission** SEP 12 1994  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In The Matter Of	)	
	)	
Implementation of Section 309(j)	)	Docket No. PP 93-253
of the Communications Act --	)	FCC 94-198
Competitive Bidding	)	
	)	

TO: The Commission

## Comments in Support of Further Notice of Proposed Rulemaking

The National Paging & Personal Communications Association ("NPPCA"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits these Comments in Support of the *Further Notice of Proposed Rulemaking*, FCC 94-198, released August 2, 1994 (FEDERAL REGISTER, 59 F.R. 41426 (Daily ed. August 12, 1994) (hereinafter "*FNPRM*")), and urges the Commission to adopt rules that will allow small businesses, and businesses owned by women and minorities, to acquire broadband PCS licenses through partitioning of geographic areas and spectrum. In support hereof, the following is shown:

### I. IDENTITY AND INTEREST

NPPCA is a newly-formed, national, non-profit trade association headquartered in Washington, D.C. NPPCA's members are small businesses and businesses owned by minorities and women. One of its main objectives is to assist new and existing small businesses with

financing, technical assistance and business support services so that they may enter the wireless telecommunications marketplace.

NPPCA seeks interconnection between the industry leaders and the newcomers to the telecommunications field. It believes that this link is important to meeting the legislative mandate of the 1993 Omnibus Budget Reconciliation Act, in that industry must invest in, and encourage the advancement of, small, minority- and female-owned businesses seeking to participate in the ownership of PCS.

On August 5-7, 1994, NPPCA held its first conference in Washington, D.C., designed specifically for minorities, women, and small businesses interested in becoming licensees of broadband PCS stations and/or participating as investors in broadband PCS bidding entities. Participants included venture capitalists, successful bidders in the recent auctions of IVDS licenses, cellular and paging resellers and agents, and others involved in the telecommunications equipment and computer industries. Among the speakers were representatives of AT&T, the FCC, Motorola, Northern Telecom, and the Small Business Administration. NPPCA will be holding its next conference in Los Angeles in early December and will focus on financing for women, minorities and small businesses interested in PCS.

## II. COMMENTS

The Commission has sought comments on whether to allow women and minority-owned companies to obtain PCS licenses from the holders of MTA and BTA broadband PCS licenses that partition geographic areas from their service areas, similar to what the FCC

adopted for rural telephone companies in the *Fifth Report and Order*, PP Docket No. 93-253, FCC 94-178, released July 15, 1994. FEDERAL REGISTER, 59 F.R. 37566 (Daily ed. July 22, 1994). In the *Fifth Report and Order*, the Commission permitted rural telephone companies (1) to form bidding consortia to bid for licenses and then to partition those licenses after the auction by filing partial assignment applications or (2) to acquire partitioned areas through private negotiations. For rural telephone companies, the FCC required that the partitioned areas conform to established political boundaries and that the partitioned areas reasonably relate to the rural telephone company's wireline service area.

NPPCA supports the Commission's proposal to allow businesses owned by women and minorities to acquire partitioned PCS licenses, with the obvious exception of having the partitioned areas relate to the rural telephone company's wireline service area. NPPCA would also extend the FCC's proposal to include small businesses as well, because they were included among those entities Congress believed should have economic opportunities to provide spectrum-based services. 47 U.S.C. § 309(j)(3)(B) and (4)(C) & (D).

**Allowing women, minorities, and small businesses ("Designated Entities") to acquire partitioned licenses would serve the public interest by increasing their opportunities to participate in spectrum-based services.** It is undisputed that winning a PCS license in an auction and building the PCS system will require significant capital. To the extent that smaller geographic

areas and/or smaller amounts of spectrum can be partitioned to Designated Entities, the public interest will be served by creating economic opportunities in spectrum-based services, as Congress mandated. Designated Entities that would otherwise be precluded financially from participating in an auction or building the MTA or BTA-sized systems may be able to afford to build a smaller system or buy less spectrum. In addition, in the case where a cellular operator holds the MTA or BTA license that encompasses its Cellular Geographic Service Area, the cellular operator could partition the area in which it is ineligible to operate to small, women-owned or minority-owned businesses that may be able to afford to provide service to that cellular service area, which is smaller than an MTA or BTA. *See* 47 C.F.R. § 24.204(f). The ability to partition licenses, therefore, will create additional opportunities for Designated Entities, which helps advance the goal that PCS licenses will be held by diverse owners.

**Partitioning of licenses will also increase the possibility for rapid buildout of service**, which would also serve the public interest. The main MTA and BTA license holder will be more interested in building the primary, affluent population centers of their licensed areas more quickly than the areas they may be willing to partition. The holder of the partitioned-area license would have the incentive to proceed with construction and commence service without the same incentive to cherry pick the areas that will receive service first. For example, just as the FCC expects rural telephone companies to be able to provide service to their wireline areas more rapidly than a

licensee of an MTA or BTA, Designated Entities may provide service to the inner city, to less affluent areas, and to ethnic areas more rapidly than such may be otherwise accomplished by the holder of a license for an entire MTA or BTA.

The Commission has asked for proposed mechanisms to partition licenses. **The mechanics of partitioning at the FCC can be accomplished through an application for partial assignment of the partitioned spectrum and/or area,**<sup>1</sup> so long as the FCC can review the qualifications of the proposed licensee of the partitioned spectrum and area. NPPCA urges the FCC to keep the process as simple as possible and still meet its statutory obligations. From an administrative perspective, the Commission may also want to require partitioning to correspond to established political boundaries of a city, county, Metropolitan Statistical Area, or State, or combinations thereof, as selected by the parties to the partitioning.

**The Commission should not prohibit or restrict partitioning for a period of time after initial PCS licensing,** since it may help Designated Entities to acquire partitioned PCS spectrum from ineligible cellular licensees that won areas larger than, but encompassing, their service areas. See 47 C.F.R. § 24.204(f). In the event that the licensing period and the buildout requirements for partitioned licenses correspond to the deadlines applicable to the

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<sup>1</sup> Partial assignment applications, whereby a licensee seeks to assign one or more frequencies within its channel complement, are commonplace in the common carrier mobile services. See 47 C.F.R. § 22.39(b)(5). A partition application simply would be a variant. Section 24.839(d)(3) already provides for partial assignments to rural telephone companies.

initial or main MTA or BTA license holder, prohibiting partitioning for a period of time places the partitioned license holders -- *i.e.*, Designated Entities -- at a disadvantage by reducing the amount of time they have to construct. An artificial time restriction would also force delay on those Designated Entities that form a consortium for bidding purposes with the intent of partitioning the license after winning a license in the auction.

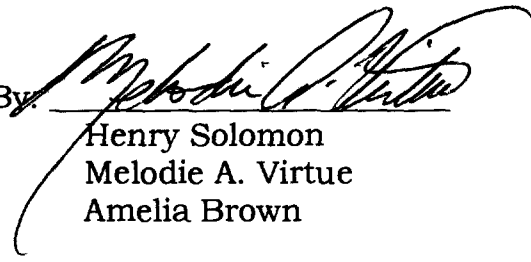
NPPCA submits that the Commission should place as few rules as possible on Designated Entities, imposing only those that are necessary to prevent abuse of the Commission's rules. Certainly, **the rules applicable to transfer or assignment of partitioned licenses should be no more stringent than those applicable to non-partitioned licenses.** NPPCA recommends that the transfer and assignment rules applicable to the holder of the 30 MHz and 10 MHz BTA licenses acquired through the Entrepreneur's Block auction (*i.e.*, Blocks C and F) should apply to the Designated Entities acquiring licenses through partitioning of those same blocks. Partitioning on all other license blocks, however, should be subject to a one-year holding period, as is applicable to Designated Entities that acquire PCS licenses through the benefit of tax certificates, unless such sale or transfer is to another qualified Designated Entity.

Adoption of rules to allow Designated Entities to acquire licenses through partitioning will serve the public interest and advance congressional directives. The administrative burden does not outweigh that public interest, as the process for partitioning will not

be unlike the process applicable to any sale or transfer. Consequently, NPPCA urges the Commission to allow Designated Entities to acquire broadband PCS licenses through partitioning.

Respectfully submitted,

NATIONAL PAGING AND PERSONAL  
COMMUNICATIONS ASSOCIATION

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